

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Maia Merin	Team: Team # 3	CCRB Case #: 200106783	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 09/12/2001 8:15 PM	Location of Incident: on the street in front of § 87(2)(b)	Precinct: 73	18 Mo. SOL 3/12/2003	EO SOL 3/12/2003	
Date/Time CV Reported Thu, 09/13/2001 9:40 AM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Sun, 09/30/2001 2:17 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Patrick Cherry	08307	926676	073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Miguel Marte	17717	927135	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Patrick Cherry	Discourtesy: PO Patrick Cherry spoke obscenely and/or rudely to § 87(2)(b)	§ 87(2)(b)
B.POM Patrick Cherry	Off. Language: PO Patrick Cherry made remarks to § 87(2)(b) based upon race.	§ 87(2)(b)
C.POM Patrick Cherry	Abuse: PO Patrick Cherry issued a summons to § 87(2)(b)	§ 87(2)(b)

Synopsis

On September 12, 2001, § 87(2)(b) observed two police officers shining a flashlight into his car at § 87(2)(b). One of the officers was later identified as an auxiliary police officer, working out of the 73rd precinct. The second officer, PO Patrick Cherry, and § 87(2)(b) became involved in a verbal altercation and § 87(2)(b) refused to provide his license and registration to PO Cherry. § 87(2)(b) claimed that during the course of his conversation with PO Cherry, PO Cherry spoke discourteously and used offensive language, calling him a “black fuck.” § 87(2)(b) also claimed that he was erroneously issued a summons for a cracked windshield. The summons issued to § 87(2)(b) by PO Cherry was canceled by Sgt. Daniel Rouse on September 13, 2001.

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) was interviewed at his home at § 87(2)(b) in Brooklyn on November 30, 2001 (encl. 4A-4C). On September 12, 2001, at approximately 8:15 p.m., § 87(2)(b) was sitting in his living room when he noticed that lights were flashing outside his house. § 87(2)(b) lives with several other family members; at the time of this incident, however, § 87(2)(b) was alone in his home. Looking out his front door, standing behind his metal screen, § 87(2)(b) observed two police officers shining a flashlight into his car. § 87(2)(b)'s car was parked directly in front of his house. The police officers were traveling on foot. § 87(2)(b) asked the officers, “What seems to be the problem? Why are you looking in my car?” PO Cherry (identified from the name on the summons) approached § 87(2)(b) and asked him for his license and registration. § 87(2)(b) replied, “No, you can not come to me and ask for my license and registration if I am in my house. What seems to be the problem?” § 87(2)(b)'s response apparently upset PO Cherry. PO Cherry turned around and cursed at § 87(2)(b) calling him a “black fuck.” PO Cherry told § 87(2)(b) that he was going to issue § 87(2)(b) a summons “whether [he] liked it or not” and subsequently called § 87(2)(b) a few more pejorative names that he could not remember. PO Cherry told § 87(2)(b) “fuck you” and the tone of the conversation was very loud.

The police officer that accompanied PO Cherry did not say anything to § 87(2)(b) during the encounter. The second police officer was a black male with short dreads. PO Cherry wrote § 87(2)(b) a summons for a cracked windshield while he was outside and left the summons on § 87(2)(b)'s car. According to § 87(2)(b) his car did not have a cracked windshield and PO Cherry was incorrect in issuing him a summons.

The next morning, on September 13, 2001, § 87(2)(b) took his car to the 73rd stationhouse where a sergeant inspected his car and did not find a cracked windshield. The sergeant told § 87(2)(b) that he would cancel the summons.

Results of Investigation

Witnesses

§ 87(2)(b) lives across the street from § 87(2)(b) and was identified by § 87(2)(b) as a witness to the incident. § 87(2)(b) was interviewed at her home at § 87(2)(b) on November 30, 2001 (encl. 5A-5C). On September 12, 2001, at approximately 8:15 p.m., § 87(2)(b) was upstairs in her home when she saw from her bedroom window two male police officers in a parked car. The police officers approached § 87(2)(b)'s front door and § 87(2)(b) came out of his house and

walked to his car. § 87(2)(b) was inside his vehicle when the officers approached him. § 87(2)(b) maneuvers his cars in and out of his driveway because he has two cars and there is only room for one car in his driveway. § 87(2)(b) was “going about his business” and got in his car, in order to move it out of the driveway.

§ 87(2)(b) remembers that both the police officers and § 87(2)(b) were “angry.” § 87(2)(b) heard § 87(2)(b) tell the police officers that they were on “his property and if they wanted to argue, they would have to get off his property.” He told them to get the “fuck out of his yard.” PO Cherry (identified based on a physical description provided by § 87(2)(b) was flashing a flashlight at § 87(2)(b) s door and in his face. PO Cherry got in § 87(2)(b) s face but § 87(2)(b) could not hear what he was saying.

This investigator attempted to contact another neighbor of § 87(2)(b) s by subpoenaing his neighbor’s phone number, a resident of § 87(2)(b). The Verizon subpoena department did not have any records for the phone number of § 87(2)(b) s other neighbor, who allegedly also witnessed the incident (encl. 10A-10B). Therefore, it was not possible to contact § 87(2)(b) s neighbor in conjunction with this case.

Witness Officer Identification

PO Cherry’s memo book entry for September 12, 2001 listed PO Marte as PO Cherry’s partner (encl. 6A-6B). PO Marte was interviewed on January 11, 2002 at CCRB. PO Marte stated that on September 12, 2001, he was working an anti-looting post (encl. 8A-8C). He was working alone and was not present for the incident. PO Cherry stated that the officer that was accompanying him was an unidentified auxiliary officer. Upon reviewing the auxiliary officer roll (encl. 11E), Mr. Dwaine Soudine was identified by PO Haskins, the coordinator for the auxiliary officers at the 73rd precinct, as the auxiliary officer who was present for the incident. § 87(2)(b), § 87(2)(g)

Police Officer Statements

PO Patrick Cherry

PO Patrick Cherry was interviewed at CCRB on January 23, 2002 (encl. 7A-7B). On September 12, 2001, PO Cherry was dressed in uniform, assigned to the precinct training unit (PTU) and was working as an anti-looting post on Pitkin Avenue. PO Cherry was working with his partner, PO Marte, earlier that day; however, at the time of the incident PO Marte’s post had been changed. At the time of the incident, PO Cherry was with a black male auxiliary officer (he could not remember his name). PO Cherry and the auxiliary officer did not have any further conversations after the incident and PO Cherry does not know where he went following the incident. PO Cherry stated that after the events of September 11, 2001, he worked for 3 solid days. He recalled that at the time of this incident, circumstances at the stationhouse were very chaotic.

On September 12, 2001, at approximately 8:15 p.m., PO Cherry was walking eastbound on Pitkin Avenue when he heard a car coming from behind him. PO Cherry observed the vehicle make a right turn on § 87(2)(b) at a high rate of speed and failing to signal. The car pulled up in front of a house on § 87(2)(b) and the driver exited the vehicle.

PO Cherry approached the driver of the vehicle and asked him for his license and registration. The driver, a heavyset black male § 87(2)(b) told PO Cherry, “Fuck you. Why are you bothering me?” PO Cherry asked § 87(2)(b) for his license and registration a second time. § 87(2)(b) spoke with a heavy accent and PO Cherry had difficulty understanding his reply, besides the fact that § 87(2)(b) told him again, “Fuck you.” At that point in the conversation, § 87(2)(b) ran into his house. PO Cherry directed § 87(2)(b) in a commanding tone of voice, to come outside. § 87(2)(b) refused and PO Cherry asked him to come outside for a second time. § 87(2)(b) came outside and started yelling at PO Cherry. PO Cherry approached § 87(2)(b) and he ran back inside.

PO Cherry did not want this situation to “go on all night” and he approached § 87(2)(b) s car. PO Cherry always carries a flashlight but he could not recall if he used it to look inside § 87(2)(b) s car. PO Cherry looked at the vehicle registration and inspection and noticed that § 87(2)(b) had a small “star” crack in the windshield. The star was a few inches in diameter and as a result, PO Cherry decided to issue § 87(2)(b) a summons for a cracked windshield. PO Cherry did not issue § 87(2)(b) a summons for failing to signal because § 87(2)(b) had refused to provide his identification.

Sgt. Daniel Rouse

Sgt. Rouse was identified as the officer who canceled the summons issued to § 87(2)(b) by § 87(2)(b). He was also identified as the officer who took § 87(2)(b) complaint regarding PO Cherry by his name on the complaint report. This investigator spoke with Sgt. Rouse, the Integrity Control Officer for the 73rd precinct on two occasions via telephone regarding § 87(2)(b) s complaint. On December 18, 2001, Sgt. Rouse stated that he could not recall if § 87(2)(b) s windshield was cracked or if the crack was too small to warrant a summons (encl. 15C). He stated that it is possible that § 87(2)(b) had his windshield fixed before he came to the stationhouse, but it was highly unlikely. On March 15, 2002, in a conversation with this investigator, Sgt. Rouse stated that PO Cherry was a new police officer and issued § 87(2)(b) a summons in error (encl. 15F). He stated that given the circumstances, the fact that § 87(2)(b) refused to provide identification, PO Cherry should have arrested § 87(2)(b) because he had been positively identified as committing a crime. Sgt. Rouse added that § 87(2)(b) should not have been issued a summons if he did not, indeed, have a cracked windshield.

Police Records

Roll Call

According to the roll call for September 12, 2001, PO Cherry was working and assigned to precinct training unit (encl. 13A-13G).

Summons issued to § 87(2)(b)

§ 87(2)(b) was issued a summons for a cracked windshield in violation of Section 375-22 VTL by PO Cherry on September 12, 2001 at approximately 8:15 p.m. (encl. 14).

Status or Disposition of Summons

Sgt. Rouse took § 87(2)(b) s CCRB complaint on September 13, 2001 and canceled § 87(2)(b) s summons. On December 18, 2001, in a conversation via telephone, Sgt. Rouse stated that he looked at § 87(2)(b) s windshield and either there was no crack or the crack was not big enough to warrant a summons. According to Sgt. Rouse, a crack has to be at least 6 inches long or obscure the view of the driver. Sgt. Rouse thought it was possible that PO Cherry did not know the specifications for issuing a summons for a cracked windshield.

§ 87(2)(b)

Criminal Conviction History and Substantiated CCRB cases

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] PO Cherry does not have any substantiated CCRB cases.

Conclusions and Recommendations

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation A and B: PO Cherry spoke obscenely/rudely to § 87(2)(b) and PO Cherry made remarks to § 87(2)(b) based upon race

§ 87(2)(b) claimed that he was inside his house at § 87(2)(b) when he noticed two police officers shining a flashlight into his car. When he came to his front door he asked PO Cherry, “What seems to be the problem?” PO Cherry asked § 87(2)(b) for his license and registration and § 87(2)(b) refused, claiming that he did not have to provide his license and registration if he was inside his home. At that point, PO Cherry became enraged and started cursing at § 87(2)(b) using the word “fuck” a couple of times. PO Cherry told § 87(2)(b) that he didn’t “give a fuck, and [he was] going to issue § 87(2)(b) a summons whether [he] liked it or not.” § 87(2)(b) also claimed that PO Cherry called him a “black fuck” during their argument but could not remember what other specific names PO Cherry called him.

PO Cherry stated that he approached § 87(2)(b) after he observed § 87(2)(b) traveling above the speed limit and failing to signal a right turn. When § 87(2)(b) stopped his car on § 87(2)(b) PO Cherry asked § 87(2)(b) for his license and registration. § 87(2)(b) told PO Cherry, “Fuck you, why are you bothering me?” PO Cherry asked him for his license and registration for a second time. Because of § 87(2)(b)’s heavy accent, PO Cherry could not understand what he said, with the exception of “fuck you.” Running inside his house, § 87(2)(b) refused to provide his license and registration. PO Cherry denied using any obscenities with § 87(2)(b) and denied calling him a “black fuck.”

§ 87(2)(g)

Allegation C: PO Cherry issued a summons to § 87(2)(b)

§ 87(2)(b) claimed that PO Cherry wrongfully issued him a summons for a cracked windshield. § 87(2)(b) stated that his windshield was not cracked at the time that he was issued a summons. § 87(2)(b) further stated that he went to the precinct the morning following to file a complaint and spoke with Sgt. Rouse. Sgt. Rouse took § 87(2)(b)’s complaint, inspected his car and canceled § 87(2)(b)’s summons.

PO Cherry stated that he observed § 87(2)(b) making a right turn, traveling above the speed limit and failing to signal. After § 87(2)(b)’s car pulled up in front of a house on § 87(2)(b) PO Cherry approached the driver. The driver was hostile and told PO Cherry, “Fuck you, why are you bothering me?” PO Cherry asked him again for his license and registration. § 87(2)(b) told PO Cherry again, “Fuck you.” Because of § 87(2)(b)’s heavy Jamaican accent, PO Cherry could not understand what else § 87(2)(b) said to him. § 87(2)(b) ran into his house and refused to come outside. PO Cherry did not want to continue arguing with § 87(2)(b) and decided to issue him a summons. Inspecting § 87(2)(b)

§ 87(2)(b)'s car, PO Cherry noticed a small "star" crack in the windshield. PO Cherry wrote § 87(2)(b) a summons for the windshield and not for failing to signal because he did not have any of his identification. After PO Cherry issued § 87(2)(b) a summons, he and the auxiliary officer left the scene.

According to Section 375-22 of New York State Vehicle and Traffic Law, "it shall be unlawful to operate a motor vehicle upon the public highways of the state which is equipped with any glass which is so broken, fractured, or discolored as to distort visibility." § 87(2)(g) however, denies that his windshield had any crack at all. Sgt. Rouse could not recall if § 87(2)(b)'s windshield was indeed cracked but too small to obscure the visibility or not cracked at all. Unlike Sgt. Rouse's opinion, Section 375-22 of New York State Vehicle and Traffic Law does not specify the size of the crack; rather, Section 375-22 merely states that the crack has to distort the driver's visibility to warrant a summons.

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
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Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
Reviewed by:	Date: